IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs August 26, 2009

CLIFFORD L. FARRA v. HOWARD CARLTON, WARDEN

Direct Appeal from the Criminal Court for Johnson County
No. 5338 Lynn W. Brown, Judge

No. E2009-00008-CCA-R3-HC - Filed February 5, 2010

The Petitioner, Clifford L. Farra, appeals pro se from the Johnson County Criminal Court's summary dismissal of his petition for habeas corpus relief. He was originally convicted of six drug-related offenses, which were brought under counts ten through fifteen of the presentment. On appeal, the petitioner claims these counts were duplicitous. He also contends the jury verdicts lacked unanimity. Upon review of the record and applicable case law, we affirm the dismissal of the petition.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

CAMILLE R. MCMULLEN, J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and D. KELLY THOMAS, JR., J. joined.

Clifford L. Farra, Mountain City, Tennessee, Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter; and Cameron L. Hyder, Assistant Attorney General, for the Appellee, State of Tennessee.

OPINION

Background. A grand jury in Sullivan County filed a seventeen-count presentment against the petitioner. He was convicted by a jury of counts ten through fifteen, which included possession of more than three hundred grams of cocaine for resale, possession of more than ten pounds of marijuana for resale, sale of more than three hundred grams of cocaine, sale of more than ten pounds of marijuana, criminal conspiracy to sell or deliver more than three hundred grams of cocaine, and criminal conspiracy to sell or deliver more than ten pounds of marijuana. The petitioner received an effective sentence of forty-four years.

On November 7, 2008, the petitioner filed a pro se petition for writ of habeas corpus relief in the Johnson County Criminal Court. He claimed the presentment did not inform him of the charges against which he had to defend and did not protect him against double jeopardy. The petitioner also claimed the jury verdicts did not specify the exact crimes for which he was convicted, and therefore the trial court did not enter proper judgments. In the State's motion to dismiss, it argued that the petitioner was not entitled to relief because his claims, even if true, did not present cognizable claims for habeas corpus relief. The trial court dismissed the petition without appointing counsel or conducting a hearing, finding that the petitioner failed to show his convictions were void or had expired.

ANALYSIS

Standard of Review. A prisoner is guaranteed the right to habeas corpus relief under article I, section 15 of the Tennessee Constitution. See also T.C.A. §§ 29-21-101 to -130. The grounds upon which a writ of habeas corpus may be issued, however, are very narrow. Taylor v. State, 995 S.W.2d 78, 83 (Tenn. 1999). "Habeas corpus relief is available in Tennessee only when 'it appears upon the face of the judgment or the record of the proceedings upon which the judgment is rendered' that a convicting court was without jurisdiction or authority to sentence a defendant, or that a defendant's sentence of imprisonment or other restraint has expired." Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993) (quoting State v. Galloway, 45 Tenn. (5 Cold.) 326, 336-37 (Tenn.1868)). "'[T]he purpose of a habeas corpus petition is to contest void and not merely voidable judgments.'" Id. at 163 (quoting Potts v. State, 833 S.W.2d 60, 62 (Tenn.1992). A void judgment "is one in which the judgment is facially invalid because the court lacked jurisdiction or authority to render the judgment or because the defendant's sentence has expired." Taylor, 995 S.W.2d at 83.

> In contrast, a voidable judgment is facially valid and requires the introduction of proof beyond the face of the record or judgment to establish its invalidity. Thus, in all cases where a petitioner must introduce proof beyond the record to establish the invalidity of his conviction, then that conviction by definition is merely voidable, and a Tennessee court cannot issue the writ of habeas corpus under such circumstances.

Hickman v. State, 153 S.W.3d 16, 24 (Tenn. 2004) (internal citation and quotations omitted); see also Summers v. State, 212 S.W.3d 251, 256 (Tenn. 2007).

Moreover, it is the petitioner's burden to demonstrate, by a preponderance of the evidence, that the judgment is void or that the confinement is illegal. Wyatt v. State, 24 S.W.3d 319, 322 (Tenn. 2000).

If the habeas corpus court determines from the petitioner's filings that no cognizable claim has been stated and that the petitioner is not entitled to relief, the petition for writ of habeas corpus may be summarily dismissed. See Hickman, 153 S.W.3d at 20. Further, the habeas corpus court may summarily dismiss the petition without the appointment of a lawyer and without an evidentiary hearing if there is nothing on the face of the judgment to indicate that the convictions are void. Passarella v. State, 891 S.W.2d 619, 627 (Tenn. Crim. App. 1994), superseded by statute as stated in State v. Steven S. Newman, No. 02C01-9707-CC-00266, 1998 WL 104492, at *1 (Tenn. Crim. App., at Jackson, Mar. 11, 1998).

I. Presentment. The petitioner argues the judgments are void because counts ten through fifteen of the presentment were duplicitous. He claims each of these counts impermissibly charged two separate offenses regarding the "sale" or "delivery" of controlled substances. For example, count eleven of the presentment states:

> The Grand Jurors for Sullivan County, Tennessee, being duly empaneled and sworn, upon their oath present that [the petitioner and co-defendant], acting in concert and each being a party to the offense, on or about December 29, 1999, in the Sate and County aforesaid and before the finding of this presentment did unlawfully, feloniously and knowingly sell and, or deliver ten pounds (10 lbs), one gram (4536 grams) or more of Marijuana, a Schedule VI Controlled Substance, contrary to T.C.A. § 39-17-417, a Class D felony, and against the peace and dignity of the State of Tennessee.

(Emphasis added). As a result, the petitioner asserts he was not informed of the charges he had to defend against at trial, and he was not protected from double jeopardy. In response, the State argues that the petitioner's claim, even if true, only renders his judgments voidable, and not void.

The Tennessee Supreme Court has held that "the validity of an indictment . . . may be addressed in a petition for habeas corpus when the indictment is so defective as to deprive the court of jurisdiction." Dykes v. Compton, 978 S.W.2d 528, 529 (Tenn. 1998). Generally, an indictment is valid if it contains sufficient information "(1) to enable the accused to know the accusation to which answer is required, (2) to furnish the court adequate basis for the entry of a proper judgment, and (3) to protect the accused from double jeopardy." State v. Hill, 954 S.W.2d 725, 727 (Tenn. 1997). The Tennessee Supreme Court has held that an indictment that specifically references the statute under which the defendant is indicted is sufficient to satisfy the notice requirement. See State v. Sledge, 15 S.W.3d 93, 95 (Tenn. 2000); see also State v. Carter, 988 S.W.2d 145, 149 (Tenn. 1999); Ruff v. State, 978 S.W.2d 95, 97, 100 (Tenn. 1998).

The petitioner contends the presentment in this case is comparable to the indictments in State v. Angela E. Isabell, which this court found to be duplicitous. No. M2002-00584-CCA-R3-CD, 2003 WL 21486982, at **3-4 (Tenn. Crim. App., at Nashville, June 27, 2003). However, that case was decided on direct appeal, and not on a petition for habeas corpus relief. This court has repeatedly held, "Duplicity in an indictment does not result in a void judgment." Michael David Russell v. Virginia Lewis, Warden, No. E2005-02644-CCA-R3-HC, 2007 WL 2141546, at *2 (Tenn. Crim. App., at Knoxville, July 26, 2007) (citing Gary Lynn Vernon v. Jim Dickman, Warden, No. M2003-02268-CCA-R3-HC, 2004 WL 1778480, at *2 (Tenn. Crim. App., at Nashville, Aug. 9, 2004)). Furthermore, violations of double jeopardy also do not result in void judgments. Id. (citing Raymond Rutter v. State, No. E2003-01386-CCA-R3-PC, 2004 WL 792066, at *3 (Tenn. Crim. App., at Knoxville, Apr. 7, 2004)). Because the petitioner has failed to show the trial court lacked jurisdiction, he is not entitled to habeas corpus relief on this issue.

II. Verdict Unanimity. The petitioner also argues the judgments are void because the jury verdicts lacked unanimity. He claims each of the verdicts included two separate offenses regarding the "sale" or "delivery" of controlled substances. For example, the jury verdict for count thirteen reads as follows:

> THE COURT: Going to Count 13 of the indictment, to the charge of Sale or Delivery of Ten Pounds One Gram or More of - of Marijuana, has the jury reached a verdict?
>
> FOREMAN MARTIN: Yes, we have.
>
> THE COURT: All right. Would you announce the verdict as to that charge?
>
> FOREMAN MARTIN: Guilty.

(Emphasis added). Therefore, he asserts the trial court did not enter proper judgments upon conviction. In response, the State contends the petitioner's claim, even if true, would not render his convictions void. We agree with the State. This court has held that challenges to unanimity of jury verdicts are not cognizable in habeas corpus proceedings. David Wayne Dunn v. Howard Carlton, Warden, No. E2007-00355-CCA-R3-HC, 2007 WL 2458781, at *2 (Tenn. Crim. App., at Knoxville, Aug. 30, 2007) (citing Robert Howell v. Tony Parker, Warden, No. W2005-00521-CCA-R3-HC, 2005 WL 1541825, at *3 (Tenn. Crim. App., at Jackson, June 27, 2005)), perm. to appeal denied (Tenn. Dec. 17, 2007). Because the petitioner has not proven the trial court was without jurisdiction, he is not entitled to habeas corpus relief.

CONCLUSION

Upon review of the record and applicable law, we conclude that the petitioner is not entitled to habeas corpus relief. Accordingly, we affirm the judgment of the Johnson County Criminal Court.

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CAMILLE R. McMULLEN, JUDGE